IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

OP.No. 6102 of 2002(B)

PETITIONER:

JEEJA.V.S. HIGHER SECONDARY SCHOOL,
VARKALA, THIRUVANANTHAPURAM.

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS:
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1. **THE GOVERNMENT OF KERALA,REPRESENTED BY THE SECRETARY GENERAL,DEPARTMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **MANAGER,SRE NARAYANA DHARMA SANGHAM TRUST,SIVAGIRI MUTTU,VARKALA 695 141**

3. **PADMAKUMARI,HIGHER SECONDARY SCHOOL (HINDI) SIVAGIRI HIGH SCHOOL,VARKALA, THIRUVANANTHAPURAM.**

BY ADV. SRI.V.A.MUHAMMED - R3
SRI.K.E.HAMZA
SRI.A.N.RAJAN BABU - R2
BY GOVERNMENT PLEADER SMT.SMITHA SUKUMARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.6102/2002

ORDER ON CMP. NO.10732/2002 IN OP. NO6102/2002

DISMISSED

16.07.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER DT. 16.6.95 OF THE D.OAPPROVING THE SERVICE OF THE PETITIONER.

EXT.P2:- COPY OF THE PEO., KOTTAYAM APPROVING THE SERVICE OF THE PETITIONER DT. 3.1.96, ORDER NO.SNS/1003/96 FROM 9.6.96 TO 28.3.96.

EXT.P3:- COPY OF THE ORDER OF THE DEO APPROVING SERVICE OF THE 3RD RESPONDENT FROM 7.12.94 TO 6.12.95.

EXT.P4:- COPY OF THE DPI, NO.ET5/20326/01/DPI, K.DIS. DT. 16.6.01.

EXT.P5:- COPY OF THE ORDER NO.G.O.(RT) NO.4591/01 G.EDN DT. 13.12.01.

EXT.P6:- COPY OF THE REVIEW PETITION FILED BY THE PETITIONER DT. 11.2.02.

EXT.P7:- COPY OF THE ORDER NO. G.O.(RT) NO.3201/01/G.EDN. TRIVANDRUM DT. 18.8.01.

EXT.R3(a):- COPY OF THE ORDER NO.SMA/29/33/627 OF THE MANAGER.

/TRUE COPY/

P.A. TO JUDGE

tss

Thottathil B. Radhakrishnan, J.

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O.P.No.6102 of 2002

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Dated this the 16th day of July, 2007.

JUDGMENT

Petitioner and the third respondent were selected for appointment as High School Assistants by the second respondent corporate management. Appointment orders dated 29-5-1996 were prepared and issued. The third respondent joined duty on 3-6-1996. Petitioner joined duty on 10-6-1996.

2. Though it may not be wholly relevant, it is appropriate to notice that the petitioner had prior service from 4-10-1994 to 7-12-1994 and from 9-1-1996 to 28-3-1996 while the third respondent had a prior service from 7-12-1994 to 6-2-1995. All such service stood approved by the statutory authorities.

3. The question for determination is as to who among the petitioner and the third respondent is the seniormost teacher to be sent on protection as a consequence of fall in division resulting out of the

staff fixation order. Rule 7 of Chapter XIV A KER requires the Manager to immediately issue an appointment order as soon as a teacher is appointed in a school. Admittedly, the appointment orders were issued to the petitioner and the third respondent on 29-5-1996. The second limb of Rule 7 in Chapter XIV A KER provides that the appointment shall be effective from the date on which the teacher is admitted to duty, provided, the appointment is duly approved. The appointment of both the teachers were duly approved. Admittedly, the petitioner was admitted to duty only on 10-6-1996 while the third respondent was admitted to duty on 3-6-1996, the respective dates on which each of them reported for duty for the first time, following the appointment orders. Therefore, the date of appointment of the third respondent is effective from 3-6-1996, while the appointment of the petitioner is effective from 10-6-1996 only.

4. Though it is the case of the petitioner that the third respondent obtained hand delivery of the

appointment order while the petitioner got her appointment order through post on 7-6-1996, I do not find any material on record to hold that the second respondent Manager was actuated by mala fides or malice in the matter of issuing the appointment orders. The third respondent is stated to have collected the appointment order from the office of the second respondent Manager and joined service on 3-6-1996. At any rate, the issue gains attention only sometimes in 2001 when the question of protection arose. Therefore, I deem it inappropriate to treat it as a case where a judicial review should result in affecting the date of effectiveness of the respective appointments of the petitioner and the third respondent.

5. Having found that the appointment of the third respondent is effective from 3-6-1996, while that of the petitioner is effective from 10-6-1996 only, the impugned decision, holding that the petitioner has to be preferred over the third respondent for being identified as a teacher to be kept out as a protected

teacher, is only to be upheld.

In the result, this writ petition fails. The same is dismissed.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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O.P.No.6102 of 2002

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JUDGMENT

Dated:16-7-2007